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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,259	05/18/2005	Kazunori Yamauchi	046124-5379	5783

  

EXAMINER	
GEISEL, KARA E	

  

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2877	

  

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/535,259

Applicant(s)

YAMAUCHI, KAZUNORI

Examiner

Kara E. Geisel

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 8-10 is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

The indicated allowability of claim 2 is withdrawn upon further consideration of Strohmeier et al. (USPN 4,676,653). Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strohmeier et al. (USPN 4,676,653), previously cited in view of DeSimone et al. (USPN 4,833,088), newly cited.

In regards to claim 2, Strohmeier discloses a color measuring device (figs. 1 and 3) for irradiating measurement light onto each colored line (13, 15) formed in a color region of a test strip and for receiving reflected light of the measurement light to measure a color intensity of each colored line (column 1, lines 30-41 and column 2, lines 35-40), the device comprising: a single mount plate (11) for mounting of a specific test strip in which at least two independent color regions are arranged in parallel to each other (13, and 15); a plurality of irradiation optical systems (17 and 19) for irradiating respective beams of measurement light onto the associated color regions of the specific test strip (29); a plurality of reception optical systems (63 and 65) for receiving respective beams of reflected light from the associated color regions (column 8, lines 13-21); an optical head carrying the plurality of irradiation optical systems and reception optical systems (45); wherein the plurality of irradiation optical systems and the plurality of reception optical systems are optically isolated from each other (as can be seen in fig. 3). Strohmeier is silent to a scanning mechanism for effecting relative movement between the mount plate and the optical

head in a scan direction traversing each colored line. However, the device is generally directed to a cheap and convenient optical head for an at home blood-glucose monitor (column 1, lines 8-45), which requires precise positioning of the test strip (column 6, lines 1-5). Therefore, there is a need in this device to have some sort of means for precisely positioning the test strip under the optical head.

DeSimone discloses an at home blood-glucose monitor (fig. 1; column 1, lines 5-25). This device comprises an optical head for measurement (column 2, lines 53-59), a single mount plate for mounting (the reagent strip 24) of a specific test strip (pad; column 2, lines 64-66), as well as a scanning mechanism for effecting relative movement between the mount plate and the optical head in a scan direction traversing test strip (30 and column 2, line 59 - column 3, line 3). The scanning mechanism used has the advantage of precise positioning with a minimum of parts, and for sealing out ambient light from the optical head, for more accurate measurements (column 2, lines 30-52). Therefore, it would have been obvious to one of ordinary skill at the time the invention was made to include in the at home blood-glucose monitor of Strohmeier's the scanning mechanism of DeSimone's in order to precisely position the test strip under the optical head with a minimum of parts, and in order to seal out ambient light from the optical head, for more accurate measurements, and therefore, more accurate determination of the blood-glucose level.

In regards to claim 3, the plurality of irradiation optical systems and the plurality of reception optical systems are mounted on the single optical head (Strohmeier fig. 3, 45).

***Allowable Subject Matter***

Claims 5, and 8-10 are allowed over the prior art of record for the reasons set forth in the previous Office Action (paper number 20070329).

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As to claim 4, the prior art of record, taken alone or in combination, fails to disclose or render obvious a color measuring device for irradiating measurement light onto each colored line formed in a color region of a test strip and for receiving reflected light of the measurement light to measure a color intensity of each colored line wherein the scanning mechanism is arranged **to move the optical head** relative to the mount plate in the scan direction, in combination with the rest of the limitations of claim 4.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kara E Geisel whose telephone number is **571 272 2416**. The examiner can normally be reached on Monday through Friday, 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on **571 272 2800 ext. 77**. The fax phone number for the organization where this application or proceeding is assigned is **571 273 8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Kara E. Geisel**  
**Art Unit 2877**

January 11, 2008